FARAD CONTINUATION SHEET NO.:
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
REVIEW PETITION (ST.) NO.5999 OF 2006
IN
WRIT PETITION NO.5069 OF 1997

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.Aspy Chinoy with Mr.Pankaj Savant i/by Mr.Sanjeev Ahooja for petitioners.

Mr.Girish Kulkarni for res.Nos.1 to 3 & 6.

Mr.S.B.Jijina, i/by M/s.Mulla & Mulla & CBC for res.Nos.4 & 5.

CORAM : H.L GOKHALE &
SMT.R.S.DALVI, JJ.
DATED : 25th April 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. This Review Petition prays that paragraph 26 of our judgment and order dated 30th September 2005 be deleted. The principal submission of Mr.Chinoy, learned Counsel appearing for the petitioners, is that what is stated in this paragraph is extraneous to the controversy that

was before the Court. The matter before the Court was with respect to not granting the permission to develop the property in the manner in which the petitioners wanted to develop it. That permission was declined by the Cantonment Board. The contention of the Cantonment Board was that the property concerned was owned by the Armed Forces and as owner of the property it is their view which is material.

3. The reply filed by one Dr.A.K. Kapoor, Defence Estate Officer in terms stated that the Armed Forces wanted 44% of the developed area for the accommodation of the married officers. There were various reasons given in the reply but this was one of the specific reasons stated in paragraph 26(ii) thereof. Not only that but he has referred to the order passed by

the Director, Defence Estate as the Appellate Authority under Section 274 of the Cantonment Act on an appeal filed by the petitioners on 21.6.1991 whereunder this ratio came to be fixed. In paragraph 32 thereof, he has further stated that despite the order dated 21st June 1991 of the Appellate Authority having become final, the petitioners were reiterating with impunity that they must get the entire land for commercial utilisation. This was the dispute before the Court and that was a matter in issue. That being so, having accepted that the land belonged to the Armed Forces, we could not have taken any other view which is what we have stated in paragraph 26 of our judgment and order.

4. In the circumstances, there is no reason to delete paragraph 26 of our judgment and order. Review Petition is

rejected.

(H.L.GOKHALE, J.)

(SMT.R.S.DALVI, J.)